

DDA EXHIBIT D4

Form of Joint Appraisal Instructions

I. Introduction

These Appraisal Instructions (these “**Instructions**”) constitute a part of that certain Disposition and Development Agreement (the “**DDA**”), dated as of [_____], by and between the City and County of San Francisco, a municipal corporation and charter city (the “**City**”) acting by and through the San Francisco Port Commission (the “**Port**” or the “**Port Commission**”), and [Forest City Development California, Inc., a Delaware corporation] (“**Developer**”). All capitalized terms used herein but not otherwise defined herein will have the meaning ascribed to such terms in the DDA as summarized in Schedule 2.

These Instructions will govern preparation and delivery of each appraisal report (each, an “**Appraisal**”) setting forth the Appraiser’s opinion of the Fair Market Value of the Subject Property for purposes of determining the price of conveyance of the Subject Property as an Option Parcel, in accordance with Article 7 of the DDA.

These Instructions, along with Section 7.3 of the DDA, will constitute the scope of work and sole instructions to be utilized by the Appraiser in preparing an Appraisal.

II. Subject Property. The Option Parcel that is the subject of these Appraisal Instructions is identified as Parcel [] as more particularly described in Attachment 1 attached hereto (the “**Subject Property**”).

III. Appraisal Standards.

Each opinion of value will be stated in a self-contained appraisal report based on a comprehensive study and analysis and setting forth, in detail, all data, analysis, and conclusions, as necessary and typical of a complete, self-contained¹ appraisal report in compliance with the current version of the Uniform Standards of Professional Appraisal Practice (“**USPAP**”).

The Appraisal Report will include the Appraiser’s final opinion of the Fair Market Value for the Subject Property stated as a specific dollar figure.

IV. Documents to be Reviewed and Considered by the Appraiser

A. Project Documents

¹ As of 2014, USPAP replaced the terminology of “Restricted Use, Summary and Self Contained”, and replaced the report content types with two types, “Appraisal Report” and “Restricted Appraisal Report.” The reference to “Self Contained” in III, Appraisal Standards, refers to the meaning it had prior to 2014. Also, the reference to “Complete” appraisal has the meaning that it did prior this term being removed officially from USPAP, i.e. essentially that no relevant and applicable valuation approaches or methodologies may be excluded (and the rationale for any approach excluded be provided).

The Subject Property shall be appraised assuming that the following documents are applicable to the property and property interests being appraised (collectively, the “**Project Documents**”):

1. The SUD and Design for Development, attached hereto as Attachment 2;
2. The Interagency Cooperation Agreement, attached hereto as Attachment 3
3. The Vertical DDA for the Subject Property, substantially in the form attached hereto as Attachment 4 which includes (a) the Scope of Development which provides the permitted uses and certain standards for development of the Subject Property, (b) the inclusionary requirement applicable to the Subject Property [*include clause (b) for residential uses only; inclusionary requirement will be an in-lieu fee for condo parcels or on-site inclusionary for rental parcels*], (c) Jobs Program, and (d) measures under the MMRP applicable to the Subject Property as identified therein;
4. The [*the Ground Lease*][*Quitclaim Deed and Restrictive Covenants*] for the Subject Property, substantially in the form attached to the Vertical DDA;
5. The rights and obligations under the Development Agreement as established by a Development Agreement Assignment, Assumption and Release substantially in the form attached hereto as Attachment 5;
6. The Master CC&Rs, substantially in the form attached hereto as Attachment 6;
7. The Vertical Cooperation Agreement, substantially in the form attached hereto as Attachment 7;
8. Lien of Special Taxes for Community Facilities District as summarized in Attachment 8;
9. Rate and Method of Apportionment as attached as Attachment 9;
10. Final Subdivision Map No. _____ that establishes the Subject Property as a legal parcel subdivided in accordance with the Subdivision Map Act and all applicable laws shown in Attachment 10.

[Add reference to any additional entitlement or regulatory approvals and any other documents not listed above to which the Subject Property will be subject, including matters affecting title to the Subject Property.]

B. Other Information

[Describe here any other documents that the Port and Developer mutually agree to present to the Appraiser for its consideration during the appraisal process, which may include, without limitation: (i) information regarding the then-current condition of the Subject Property, (ii) additional information regarding the status of all required horizontal

improvements, (iii) cost estimates or other information relevant to the cost or value of the vertical development, and (iv) data from recent transactions at the site or nearby sites.]

V. Appraisal Purpose and Report Requirements.

A. Purpose.

[For fee transfers:] The appraisal assignment is to determine, subject to the Special Instructions and Extraordinary Assumptions set forth in these Instructions, the Fair Market Value as defined by California Code of Civil Procedure section 1263.320 of the fee interest in the Subject Property (the "**Fee Value**"), which will be the purchase price of the fee simple interest in the Subject Property pursuant to the Vertical DDA.

[For transfers pursuant to Fully Pre-paid Leases:] The appraisal assignment is to determine, subject to the Special Instructions and Extraordinary Assumptions set forth in these Instructions (1) the Fair Market Value as defined by California Code of Civil Procedure section 1263.320 of the fee interest in the Subject Property (the "**Fee Value**"), (2) the Fair Market value of the Lease fee Interest; and (3) the Fair Market Value of the Leasehold Interest, as a 99-year lease, prepaid (the "**Prepaid Lease Value**").

[For transfers pursuant to Hybrid Leases:] The appraisal assignment is to determine, subject to the Special Instructions and Extraordinary Assumptions set forth in these Instructions (1) the Fair Market Value as defined by California Code of Civil Procedure section 1263.320 of the fee interest in the Subject Property (the "**Fee Value**"), (2) the Fair Market value of the Lease fee Interest; and (3) the Fair Market Value of the Leasehold Interest, as a 99-year lease, prepaid (the "**Prepaid Lease Value**"). In addition, consult with at least 2 firms from Qualified Investment Advisor pool established by the Port and Developer and determine factors that, when multiplied by the Fee Value or the Prepaid Lease Value, would be equal annual ground rent, if no rent is prepaid.

The Port intends to use the Appraisal to support its findings that the proposed *[ground lease][sale]* is consistent with the conditions in the State statute (AB 418) allowing for the Port's sale of a fee or leasehold interest in the 28-Acre Site free from public trust restrictions, subject to the Port receiving fair market value for the lease or sale of any trust termination lands or interest in the lands.

B. Appraisal and Report Requirements.

1. General Principles. Each Appraisal will be prepared in accordance with USPAP and the following requirements:

a. The Appraiser shall take into account the terms and conditions of the Project Documents applicable to the Subject Property, including, without limitation, the Lien of Special Taxes, and the terms of the Vertical DDA, [the Ground Lease][Quitclaim Deed and Restrictive Covenants] and Development Agreement Assignment, Assumption and Release.

Without limiting the generality of the foregoing, it is specifically recognized that, in accordance with the provisions of the Parcel Lease, in addition to the [Prepaid Lease Value] [Annual Rent], the holder of the leasehold interest will be responsible to make certain Percentage Rent and participation payments thereunder.

b. The Appraiser shall take into account any other covenants, conditions, and restrictions or easements benefitting or burdening the Subject Property and any unusual characteristics of the Subject Property, including without limitation, zoning, land use and other regulatory restrictions applicable to the Subject Property as of the date of value of the Appraisal.

c. The Appraiser shall explain the reasoning applied to arrive at the final opinion of value and how the results of each approach to value were weighed in that opinion, and the reliability of each approach to value for solving the particular appraisal problem.

d. The Appraiser shall state as a single amount (*i.e.*, not a range of values) his or her final opinion of *[each of]* the Fee Value[, *the Prepaid Lease Value and the Annual Rent*].

e. Comparable market data (“**comparables**”) shall be presented in individual write-up sheets and include the following data:

- Physical address and legal description (if possible)
- Parties to the transaction
- Date of Transaction
- Sales price
- Financing terms and conditions (if known)
- Property rights conveyed
- Transaction conditions (buyer motivation, arm's length, distressed, etc.) (if discoverable)
- Description of improvements, including utilities available
- Size and shape of property
- Unit counts (if applicable)
- Current Use
- Zoning and proposed zoning change (if applicable)
- Development of capitalization rate (if sale comparable is income producing)
- Verification of the transaction data (including names and contact information of with whom the transaction was verified/confirmed and date verified)

f. Comparable lease data shall additionally include:

- Date of lease or most recent transaction

- Lease rates and terms
- TI allowances, expense allocations, and rental concessions, if any and known
- Square feet of leased space (and basis of calculation, if known)
- Date and source of verification

g. The Appraiser shall physically inspect all comparables relied upon if located within a sixty (60) mile radius of the Subject Property. As to any comparables relied upon outside of this radius, the Appraiser shall take other reasonable steps to evaluate the location and condition of the comparable.

h. Discount and capitalization rates must be supported by market data and discussed in the narrative as to how they were derived.

i. The actual adjustments shall be set forth in an adjustment grid(s) and discussed in sufficient detail to lead the reader to the Appraiser's conclusions.

j. Photographs of all comparables utilized by the Appraiser shall be provided within the appraisal, including original photographs of all comparables physically inspected.

k. Maps displaying the location of all comparables as compared to the Subject Property shall be included.

l. Consistent with USPAP direction, the Appraiser shall avoid use of, or justify inclusion of comparable sales requiring extraordinary verification and weighting considerations, such as sales to governmental agencies, sales to non-profit organizations, sales to environmental organizations, sales to parties desiring to exchange the land to the government, distressed sales, and other atypical or non-arm's length sales.

m. The Appraiser must provide a line-item discussion reflecting the development of each income, expense, vacancy, infrastructure, cost-to-cure, or demolition item cited in the Appraisal.

n. Property operating expenses, development costs, delay costs may be supported by comparables construction contracts, building contractors, cost-estimators, cost-estimating services to industry recognized income/expense manuals such as Marshall & Swift, BOMA, IREM, etc.

o. If the Appraiser chooses to use self-made or commercial appraisal software, such as Argus Enterprise, Microsoft Excel etc., he/she must provide all supporting printouts, spreadsheets, and electronic versions of the files, which support the Operating Income Statement or Discounted Cash Flow (DCF) analyses provided within the Appraisal.

C. Extraordinary Assumptions and Special Instructions

1. Extraordinary Assumptions

a. Upon conveyance, the Subject Property will be a valid legal parcel in accordance with the requirements of the Subdivision Map Act and will be fully entitled subject only to design review approval by Planning in accordance with the requirements of the SUD and Design for Development and approval of building permits by the Port for Vertical Improvements and approvals necessary to commence Deferred Infrastructure.;

b. *[add if commercial parcel]*: An Office Development Authorization from the Planning Commission (per Planning Code Sections 321 and 322), and approval from the Planning Department is not required for new office development under the jurisdiction of the Port.

c. The Subject Property has access to public streets and all required utilities necessary to serve the development as further described in the Project Documents. *[If horizontal improvements are not yet complete, substitute the following: The Subject Property will be provided with access to public streets and required utilities necessary to serve the development as and when provided in the Vertical DDA and Vertical Cooperation Agreement.]*

d. The Subject Property is graded and soil compacted in accordance with the certification of Developer's geotechnical engineer *[NTD: This may not be the case for all parcels at Pier 70 (e.g., parcels with basement excavation), and special instructions will be provided]*.

e. The Subject Property was remediated in accordance with the *[insert standard of remediation to be provided]* and no further remediation is required. *[NTD: This may not be the case for P70, and special instructions will be provided.]*

f. The permitted uses are set forth in the Vertical DDA's Scope of Development of the Subject Property (residential (rental or for-sale) or commercial), including maximum density and maximum off-street parking.

g. *[applies to residential uses only]* The affordable housing requirements applicable to the Subject Property (in-lieu fee for condo parcels, on-site inclusionary for rental) are set forth in the Development Agreement.

2. Special Instructions

a. In evaluating the estimated revenue to be derived from the anticipated development of the Subject Property, the Appraiser shall (1) consider data provided by the Port and Developer, (2) consult with a real estate broker or brokerage firm with at least 5 years' experience in the San Francisco real estate market, and (3) review proprietary rent roll and sublease information from the following operating buildings at Pier 70 _____, after signing a non-disclosure agreement (Attachment 11).

b. In evaluating the estimated construction period and development costs of the anticipated development of the Subject Property for the purposes of a residual land value analysis, the Appraiser shall consult with a general contractor or construction cost estimator with at least 5 years' experience in estimating construction costs of similar

developments in San Francisco and may consider construction cost estimates provided by the Port and Developer.

c. The Appraiser shall provide a detailed analysis of the method(s), data and information relied upon in determining each capitalization rate used in the Appraisal. In making this determination, the Appraiser shall conduct and document (name, title, company and opinion summary) market participant interviews regarding market capitalization rates for fee simple *[and leasehold]* transactions and for transactions involving completed buildings and development sites, and consult with at least 2 Qualified Investment Advisors. "**Qualified Investment Advisor**" means a firm providing real estate investment banking or real estate investment advisory services, including real estate investment brokerage services, with at least 10 years' experience in the San Francisco real estate market, selected from the list of firms set forth on Schedule 5, or another comparable firm approved by Port and Developer.

d. Based on the comparables set, market participant interviews and consultation with at least 2 Qualified Investment Advisors, the Appraiser shall quantify the capitalization rate differential between fee simple and the subject leasehold transactions. The Port and Developer understand that the capitalization rate differential between fee simple and leasehold transactions has historically been greater than 5 basis points. The Appraisal shall include a reasoned narrative to support the conclusion set forth in the Appraisal regarding the capitalization rate differential, including any deviation from the historic differential.

e. *[For lease transfers:]* The Appraiser shall select approaches to value that are applicable to the assignment, but shall include a residual land value analysis as one approach.

f. *[For transfers by Hybrid Lease]* In order to determine Annual Ground Rent, the Appraiser shall quantify, based on consultation with at least 2 Qualified Investment Advisors, a factor which when multiplied by either the Fee Simple Value or the Prepaid Lease Value, yields the Annual Rent (the "Annual Rent Conversion Factor") i.e., Fee Simple Value or Prepaid Lease Value (\$X) x Annual Rent Conversion Factor (Y%) = Annual Rent. The Appraiser and Qualified Investment Advisors may determine the Annual Rent Conversion Factor as a factor to be applied against either the Prepaid Lease Value or the Fee Simple Value, and the Appraisal shall state whether the Annual Rent Conversion Factor specified is to be applied against Fee Simple Value or Prepaid Lease Value. The Port and Developer understand that an Annual Rent Conversion Factor applied to Prepaid Lease Value would be different and higher than an Annual Rent Conversion Factor applied to Fee Simple Value, but in either case the Annual Rent Conversion Factor should be determined so as to yield the same result when multiplied by the appropriate value, i.e., the Fair Market Annual Rent. The Annual Rent Conversion Factor shall be within the range recommended by the Qualified Investment Advisors, and the Appraisal shall include a reasoned narrative to support the conclusion set forth in the Appraisal regarding the determination of the Annual Rent Conversion Factor within that range.

VI. Appraisal Procedures.

The following sets forth the procedures for the preparation of each Appraisal; these procedures may be modified or waived by mutual agreement of Port and Developer, each agreeing to such modification or waiver in its sole discretion.

A. Contracting Parties. The Appraiser will be engaged jointly by Developer and Port (collectively, the “**Contracting Parties**”) and will be provided with points of contact for each to assist in completing the assignment. For questions regarding the appraisal and subject documents, please contact both of the following:

Port Contact:

Name, Address, Phone #, Email address

Developer Contact:

Name, Address, Phone #, Email address

B. Pre-Work Conference: At the request of the Contracting Parties, the Appraiser will attend a pre-work conference for discussion and understanding of these Instructions, including a timing update. The pre-work conference may be held in conjunction with an inspection of the Subject Property.

C. Inspection: Inspection of the Subject Property is to be coordinated with the property contacts who will both have the option of having representatives attend the inspection with the Appraiser.

D. Draft Report: The Appraiser will submit to the Contracting Parties an initial draft appraisal report (the “**Draft Report**”), consisting of an unprotected PDF copy of such report, within the period specified within the fully executed contract for appraisal services. The Appraiser shall maintain a well-documented workfile, available on request for review by the Contracting Parties, containing supporting documents, meeting and interview notes, and other materials relied upon but not included in the Appraisal.

E. Review and Comment Period: Following its receipt of the Draft Report, the Contracting Parties will review such Draft Report and, within 15 calendar days thereafter, provide any comments or feedback to the Appraiser-

F. Final Appraisal: Following receipt of any comments, the Appraiser will, within a reasonable time (not to exceed 15 calendar days without the Contracting Parties’ written consent), revise the Draft Report as appropriate after considering any such comments or feedback and deliver to the Contracting Parties a final Appraisal, by emailing a PDF report and delivering by overnight delivery service two (2) signed hard copies of the Final Appraisal.

VII. Confidentiality.

The Contracting Parties and the Appraiser acknowledge and agree that, in the course of preparing an Appraisal pursuant to these Instructions, the Contracting Parties may disclose

confidential information, which has been approved and authorized by Contracting Parties for release, to the Appraiser.

The Appraiser agrees not to disclose such confidential information to any third party and to treat it with the same degree of care as it would its own confidential information. It is understood, however, that the Appraiser may disclose such confidential information on a “need to know” basis to the Appraiser’s employees and subcontractors. As a condition precedent to any such disclosure, each and all of such employees and subcontractors will have executed a written confidentiality agreement with the Contracting Parties which obligates such employees and subcontractors to maintain the confidentiality of such confidential information.

Each Appraisal, the Fair Market Value determination included therein, and the supporting documentation, also constitute confidential information, and the Appraiser will strictly abide by the confidentiality and ethics provisions of the Appraisal Institute and USPAP.

The Appraiser must obtain written authorization from the Contracting Parties before disclosure of any confidential information. The passage of time in and of itself will not extinguish either the Appraiser’s responsibility for confidentiality or the appraiser/client relationship. The appraiser/client relationship is extinguished only upon written release from the Contracting Parties. Even though the appraiser/client relationship may terminate, the Appraiser will at all times remain subject to the confidentiality and ethics provisions of Appraisal Institute and USPAP.

VIII. ATTACHMENTS AND SCHEDULES

The following Attachments and Schedules attached to these Joint Appraisal Instructions are incorporated herein by this reference:

Attachment 1: Subject Property

Attachment 2: SUD and Design for Development

Attachment 3: Interagency Cooperation Agreement

Attachment 4: Form of Vertical DDA

Attachment 5: Form of Development Agreement Assignment, Assumption and Release

Attachment 6: Form of Master CC&Rs

Attachment 7: Form of Vertical Cooperation Agreement

Attachment 8: Summary of Lien of Special Taxes

Attachment 9: Rate and Method of Apportionment

Attachment 10: Final Subdivision Map

Attachment 11: Form of Non-Disclosure Agreement

Schedule 1: Subject Property Special Instructions

Schedule 2: DDA Defined Terms

Schedule 3: Background

Schedule 4: Appraisal Notice

Schedule 5: List of Qualified Investment Advisors

SCHEDULE 1: SUBJECT PROPERTY SPECIAL INSTRUCTIONS

[Special Instructions to include, without limitation:

- *Description of the grading, excavation and geotechnical condition of the site (as certified by Developer's geotechnical engineer), and the applicable standard of remediation.*
- *If the Subject Property includes a basement level, description of the condition of the site, which may be left as-is, or partially pre-excavate.*
- *Separate Special Instructions for Residential and Commercial-Office if the Subject Property is Flex and a dual appraisal is requested by Developer.]*

SCHEDULE 2: DDA DEFINED TERMS

SCHEDULE 3: BACKGROUND

A. Entitlement and Legal Framework. The applicable zoning for the 28-Acre Site is set forth in the Pier 70 Special Use District (the “**SUD**”) and Design for Development that govern the development standards and guidelines for Vertical Development. The DDA is the principal agreement governing development of the 28-Acre Site, including both “horizontal” and “vertical” development of the Project, delivery of public benefits and the financial structure for the transaction. The City has entered into a Development Agreement with Developer that provides vested rights to both horizontal and vertical development to proceed in accordance with the Project Approvals and Transaction Documents.

B. Horizontal Development and Deferred Infrastructure.

1. Developer is responsible under the DDA for horizontal development of the Project, including entitlement, site preparation (including grading and environmental remediation), subdivision and construction work related to streets and sidewalks, public realm amenities (e.g., parks and open space), public utilities and shoreline improvements to create development parcels and support and protect buildings (including affordable housing). Standards for horizontal development are set forth in the Infrastructure Plan attached to the DDA and the Streetscape Plan subsequently approved by the Port. Under the Interagency Cooperation Agreement, the City and Port agree to process applications for Horizontal Improvements and subdivision maps consistent with the DDA (including the Infrastructure Plan and Streetscape Plan) and in accordance with the streamlined review and approval procedures set forth therein.

2. The DDA establishes the scope and timing of Project phasing through a Phasing Plan and Schedule of Performance that establishes deadlines by which Developer must submit development applications for each Phase, commence and complete the Phase Improvements within each Phase, and deliver Associated Public Benefits, subject to Excusable Delay. The DDA also allows Developer to identify Deferred Infrastructure Zones associated with Option Parcels within which items of Deferred Infrastructure may be assigned to Vertical Developers. Each Deferred Infrastructure Zone may consist of the following: (i) the area between back-of-curb and the adjacent Development Parcel boundary (or if none, the adjacent Public Spaces); (ii) up to 40’ feet of Public Spaces and mid-block passages adjacent to Development Parcels; and the entire portion of Market Square (OS-2) that will be built in the air parcel above Parcel D; and (iii) the area adjacent to Development Parcels for the installation of service infrastructure, including laterals, traps, air vents, clean-outs, meter boxes, backflow preventers, irrigation facilities and associated pedestals, pull boxes, and secondary conduits. Master Developer or the applicable Vertical Developer as assigned will be obligated to construct the Deferred Infrastructure, subject to the Schedule of Performance attached as DDA Exhibit B2 and as outlined in the Vertical Cooperation Agreement.

C. Phase Submittals. The Subject Property is included within the Phase Submittal for Phase [XX] of the Project, a copy of which is attached hereto as Attachment 2. The Phase Submittal sets forth all applicable obligations and timing for completion of Phase Improvements

within the applicable Phase, the range of residential density and maximum off-street parking that can be allocated to each Option Parcel and the public benefits that will be provided with the delivery of Vertical Improvements within the applicable Phase, including child-care facilities, community facilities and affordable housing.

D. Conveyance of Subject Property and Vertical Development. Pursuant to Section 7.3(a) of the DDA, Developer has triggered the appraisal process for the Subject Property by delivering to the Port the Appraisal Notice attached hereto as Schedule 4. In the Appraisal Notice, Developer has identified the Subject Property, provided a detailed program of uses planned for the parcel, including the area programmed for each type of use, the location, and amount of office development on the Subject Property that would be counted against the maximum annual limit under Planning Code Section 321 and identified the inclusionary housing, fee and program requirements that will be binding on the Subject Property consistent with the Affordable Housing Plan.

SCHEDULE 4: APPRAISAL NOTICE

SCHEDULE 5: LIST OF QUALIFIED INVESTMENT ADVISORS